

## Internal Revenue Service

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Department of the Treasury  
Washington, DC 20224

Third Party Communication: None  
Date of Communication: Not Applicable

Person To Contact:  
, ID No.

Telephone Number:

Refer Reply To:  
CC:PSI:B09  
PLR-121620-06  
Date: December 7, 2006

Date 1 =  
Husband =  
Wife =  
Insurance Trust =  
Date 2 =  
Child 1 Trust =  
Child 2 Trust =  
Child 3 Trust =  
Child 4 Trust =  
Date 3 =  
Family Trust =  
Year 1 =  
Tax Preparer =  
Year 2 =  
Year 3 =  
Year 4 =  
Date 4 =

Dear :

This responds to your representative's letter dated January 30, 2006, requesting an extension of time under § 2642(g) of the Internal Revenue Code and § 301.9100-3 of the Procedure and Administration Regulations to make elections under § 2632(c)(5).

### FACTS

The facts and representations submitted are summarized as follows. On Date 1, Husband and Wife established Insurance Trust, an irrevocable trust. Under the provisions of Insurance Trust, there is a possibility that a GST may occur and it is

considered a “GST trust” within the meaning of § 2632(c)(3)(B). Husband and Wife did not intend to allocate GST exemption to any transfers to Insurance Trust.

On Date 2, Husband established Child 1 Trust and Child 2 Trust and Wife established Child 3 Trust and Child 4 Trust. The beneficiary of each trust is the respective child of Husband and Wife for whom the trust was named. Under the provisions of each trust there is a possibility that a GST may occur and each is considered a “GST trust” within the meaning of § 2632(c)(3)(B). Husband and Wife did not intend to allocate GST exemption to any transfers to these trusts.

On Date 3, Husband established Family Trust. Under the provisions of Family Trust, there is a possibility that a GST may occur and it is considered a “GST trust” within the meaning of § 2632(c)(3)(B). Husband and Wife did not intend to allocate GST exemption to any transfers to Family Trust.

In Year 1, Husband made transfers to Insurance Trust, Child 1 Trust, and Child 2 Trust. Wife made transfers to Child 3 Trust and Child 4 Trust. Tax Preparer prepared Year 1 Forms 709 (United States Gift (and Generation-Skipping Transfer) Tax Return) for Husband and Wife. Husband and Wife consented under § 2513 to have gifts by each of them during Year 1 considered as made one-half by each of them. The Forms 709 filed by Husband and Wife reported the respective transfers made by Husband and Wife in Year 1. In addition, Husband elected under § 2632(c)(5) to have the automatic allocation rules in § 2632(c) not apply to all transfers made by him during Year 1 and all future years to Insurance Trust, Child 1 Trust, and Child 2 Trust. Similarly, Wife elected under § 2632(c)(5) to have the automatic allocation rules in § 2632(c) not apply to all transfers made by her during Year 1 and all future years to Child 3 Trust and Child 4 Trust. In preparing Forms 709 for Husband and Wife, Tax Preparer inadvertently failed to elect under § 2632(c)(5) to have the automatic allocation rules in § 2632(c) not apply to the Husband’s deemed gifts (under § 2513) to Child 3 Trust and Child 4 Trust and Wife’s deemed gifts (under § 2513) to Insurance Trust, Child 1 Trust, and Child 2 Trust.

In Year 2, Husband made transfers to Child 1 Trust, Child 2 Trust, and Family Trust. Wife made transfers to Child 3 Trust, Child 4 Trust, and Family Trust. Tax Preparer prepared Year 2 Forms 709 for Husband and Wife. Husband and Wife consented under § 2513 to have gifts by each of them during Year 2 considered as made one-half by each of them. The Forms 709 filed by Husband and Wife reported the respective transfers made by Husband and Wife to the children’s trusts. However, Tax Preparer mistakenly reported the transfers made in Year 2 by Husband and Wife to Family Trust as transfers to Insurance Trust. Accordingly, on Husband’s and Wife’s Year 2 Forms 709, no elections under § 2632(c)(5) were made with respect to Husband’s and Wife’s unreported transfers to Family Trust, but an election was made under § 2632(c)(5) to have the automatic allocation rules in § 2632(c) not apply to all transfers made by Wife during Year 2 and all future years to Insurance Trust. In addition, as in Year 1, in preparing Forms 709 for Year 2, Tax Preparer inadvertently failed to elect

under § 2632(c)(5) to have the automatic allocation rules in § 2632(c) not apply to the Husband's and Wife's deemed gifts.

In Year 3, Husband made transfers to Child 1 Trust, Child 2 Trust, and Family Trust. Wife made transfers to Child 3 Trust, Child 4 Trust, and Family Trust, in the same amounts as Husband's respective transfers. Tax Preparer prepared Year 3 Forms 709 for Husband and Wife. Husband and Wife did not consent under § 2513 to have gifts by each of them considered as made one-half by each of them. The Forms 709 filed by Husband and Wife reported the respective transfers made by Husband and Wife to the children's trusts. However, Tax Preparer mistakenly reported the transfers made in Year 3 by Husband and Wife to Family Trust as transfers to Insurance Trust. Accordingly, on Husband's and Wife's Year 3 Forms 709, no elections under § 2632(c)(5) were made for the unreported transfers to Family Trust.

In Year 4, Husband made transfers to Child 1 Trust, Child 2 Trust, Insurance Trust, and Family Trust. Wife made transfers to Child 3 Trust, Child 4 Trust, Insurance Trust, and Family Trust. Tax Preparer prepared Year 4 Forms 709 for Husband and Wife. Husband and Wife consented under § 2513 to have gifts by each of them during Year 4 considered as made one-half by each of them. The Year 4 Forms 709 filed by Husband and Wife reported the respective transfers made by Husband and Wife to the children's trusts and the Insurance Trust, but failed to report the respective transfers made by Husband and Wife to Family Trust. Accordingly, on Husband's and Wife's Year 4 Forms 709, no elections under § 2632(c)(5) were made for the unreported transfers to Family Trust. In addition, as in Year 1 and Year 2, Tax Preparer inadvertently failed to elect under § 2632(c)(5) to have the automatic allocation rules in § 2632(c) not apply to the deemed gifts of Husband and Wife.

Husband and Wife were advised of these errors on Date 4. Husband and Wife now request the following rulings:

1. Husband is granted an extension of time under § 2642(g)(1) and § 301.9100-3 to make elections under § 2632(c)(5) to have the automatic allocation rules contained in § 2632(c)(1) not apply to his unreported transfers to Family Trust in Year 2 through Year 4 and to his deemed gifts to Child 3 Trust and Child 4 Trust in Year 1, Year 2, and Year 4 and to Insurance Trust and Family Trust in Year 4.
2. Wife is granted an extension of time under § 2642(g)(1) and § 301.9100-3 to make elections under § 2632(c)(5) to have the automatic allocation rules contained in § 2632(c)(1) not apply to her unreported transfers to Family Trust in Year 2 through Year 4 and to her deemed gifts to Child 1 Trust and Child 2 Trust in Year 1, Year 2, and Year 4, to Insurance Trust in Year 1 and Year 4, and to Family Trust in Year 2 and Year 4.

## LAW & ANALYSIS

Section 2601 imposes a tax on every GST. A GST is defined under § 2611(a) as (1) a taxable distribution, (2) a taxable termination, and (3) a direct skip.

Section 2631(a) provides that, for purposes of determining the inclusion ratio, every individual shall be allowed a GST exemption amount that may be allocated by such individual (or his executor) to any property with respect to which such individual is the transferor. Section 2631(b) provides that the GST exemption amount for any calendar year shall be equal to the applicable exclusion amount under § 2010(c) of the Code for such calendar year. Section 2631(b) provides that any allocation under § 2631(a), once made, shall be irrevocable.

Section 2632(a) provides that any allocation by an individual of his or her GST exemption under § 2631(a) may be made at any time on or before the date prescribed for filing the estate tax return for such individual's estate (determined with regard to extensions), regardless of whether such a return is required to be filed.

Section 2632(c) is effective for transfers subject to chapter 11 or 12 made after December 31, 2000. See P.L. 107-16, § 561(a). Section 2632(c)(1) provides that if any individual makes an indirect skip during such individual's lifetime, any unused portion of such individual's GST exemption shall be allocated to the property transferred to the extent necessary to make the inclusion ratio for such property zero. If the amount of the indirect skip exceeds such portion, the entire unused portion shall be allocated to the property transferred.

Section 2632(c)(3)(A) provides that for purposes of § 2632(c), the term indirect skip means any transfer of property (other than a direct skip) subject to the tax imposed by chapter 12 to a GST trust.

Section 2632(c)(3)(B) provides, in part, that the term "GST trust" means a trust that could have a generation-skipping transfer with respect to the transferor unless the trust instrument provides that more than 25 percent of the trust corpus must be distributed to or may be withdrawn by one or more individuals who are non-skip persons (I) before the date that the individual attains age 46, (II) on or before one or more dates specified in the trust instrument that will occur before the date that such individual attains age 46, or (III) upon the occurrence of an event that, in accordance with regulations prescribed by the Secretary, may reasonably be expected to occur before the date that such individual attains age 46.

Section 2632(c)(5)(A)(i)(I) provides that an individual may elect to have § 2632(c)(1) not apply to an indirect skip. Such an election shall be deemed to be timely if filed on a timely filed gift tax return for the calendar year in which the transfer was made or

deemed to have been made pursuant to § 2632(c)(4) or on such later date or dates as may be prescribed by the Secretary.

Section 2642(g)(1)(A) provides, generally, that the Secretary shall, by regulation, prescribe such circumstances and procedures under which extensions of time will be granted to make an allocation of GST exemption described in § 2642(b)(1) or (2), and an election under § 2632(b)(3) or (c)(5). Such regulations shall include procedures for requesting comparable relief with respect to transfers made before the date of the enactment of this paragraph.

Section 2642(g)(1)(B) provides that in determining whether to grant relief under this paragraph, the Secretary shall take into account all relevant circumstances, including evidence of intent contained in the trust instrument or instrument of transfer and such other factors as the Secretary deems relevant. For purposes of determining whether to grant relief under this paragraph, the time for making the allocation (or election) shall be treated as if not expressly prescribed by statute.

Notice 2001-50, 2001-2 C.B. 189, provides that under § 2642(g)(1)(B), the time for allocating the GST exemption to lifetime transfers and transfers at death, the time for electing out of the automatic allocation rules, and the time for electing to treat any trust as a GST trust are to be treated as if not expressly prescribed by statute. The Notice further provides that taxpayers may seek an extension of time to make an allocation described in § 2642(b)(1) or (b)(2) or an election described in § 2632(b)(3) or (c)(5) under the provisions of § 301.9100-3.

Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but no more than six months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except in subtitles E, G, H, and I.

Section 301.9100-3(a) provides that, in general, requests for extensions of time for regulatory elections that do not meet the requirements of § 301.9100-2 must be made under the rules of § 301.9100-3.

Under § 301.9100-1(b), a regulatory election includes an election whose due date is prescribed by a notice published in the Internal Revenue Bulletin. In accordance with § 2642(g)(1)(B) and Notice 2001-50, taxpayers may seek an extension of time to make an election described in § 2642(b)(1) or (b)(2) or an election described in § 2632(b)(3) or (c)(5) under the provisions of § 301.9100-3.

Requests for relief under § 301.9100-3 will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted

reasonably and in good faith, and that granting relief will not prejudice the interests of the government.

Section 301.9100-3(b)(1)(v) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or to advise the taxpayer to make, the election.

We conclude, based on the facts submitted and the representations made, that the requirements of § 301.9100-3 have been satisfied. Therefore, Husband is granted an extension of time of 60 days from the date of this letter to make an election under § 2632(c)(5) to have the automatic allocation rules contained in § 2632(c)(1) not apply with respect to Husband's unreported transfers to Family Trust in Year 2 through Year 4 and to his deemed transfers to Child 3 Trust and Child 4 Trust in Year 1, Year 2, and Year 4 and to Insurance Trust and Family Trust in Year 4. Wife is granted an extension of time of 60 days from the date of this letter to make an election under § 2632(c)(5) to have the automatic allocation rules contained in § 2632(c)(1) not apply with respect to Wife's unreported transfers to Family Trust in Year 2 through Year 4 and to her deemed transfers to Child 1 Trust and Child 2 Trust in Year 1, Year 2, and Year 4, to Insurance Trust in Year 1 and Year 4, and to Family Trust in Year 2 and Year 4. The elections under § 2632(c)(5) should be made on Supplemental Forms 709 and each Supplemental Form 709 should be filed with the Cincinnati Service Center at Internal Revenue Service, Cincinnati Service Center – Stop 82, Cincinnati, OH 45999. A copy of this letter should be attached to each Supplemental Form 709.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

William P. O'Shea  
Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosure (0)